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SUPREME COURT OF THE UNITED STATES.

No. ~~100.~~ 54.

HYPOLITUS JOSEPH AUGUSTINE ESTHO ET AL.

VERSUS

BENJAMIN L. LEAR, ADMINISTRATOR OF THADDEUS KOSCIUSKO.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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UNITED STATES OF AMERICA, ss.—The President of the United States, to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you or some of you, between Hypolitus Joseph Augustin Estho, Catharine Estho, Romanus Estho, Martina Estho, and Louisa Estho, complainants, against Benjamin L. Lear, adm'r of Thaddeus Kosiusko, defendant, a manifest error hath happened, to the great damage of the said complainants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties

aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this 17th day of January, 1832.

WM. BRENT, [L. S.]

Clerk Circuit Court, District of Columbia, for the county of Washington.

UNITED STATES OF AMERICA, District of Columbia, Washington county, ss.

To Benjamin L. Lear, adm'r of Thaddeus Kosiusko:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Monday of next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Hypolitus Joseph Augustin Estho, Catharine Estho, Romanus Estho, Martina Estho, and Louisa Estho, are plaintiffs, and you are defendant, to show cause, if any there be, why judgment rendered against the said plaintiffs, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Cranch, Chief Judge of the circuit court for the District of Columbia, this 14th day of January, A. D. 1832.

Service acknowledged by B. L. Lear, Esq., 14 January, 1832.

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the 56th. Were present:

The Hon. { WILLIAM CRANCH, Chief Judge.
BUCKNER THRUSTON, and
JAMES S. MORSEL, Assistant Judges.

HENRY ASHTON, Esq., Marshal.
WILLIAM BRENT, Clk.

In the record of proceedings of the same court, among others are the following, to wit:

Hypolitus Joseph Augustin Estho, Catharine Estho, Romanus Estho, Martina Estho, and Louisa Estho, *against* Benjamin L. Lear, administrator of Thaddeus Kosiusko.

Be it remembered, that, heretofore, to wit, on the first day of November, in the year of our Lord eighteen hundred and twenty-seven, the said con-

plainants, by Thomas Swann, Esquire, their solicitor, filed in court here the following bill of complaint, and exhibits.

Bill of complaint.

To the honorable the circuit court of the District of Columbia, for the county of Washington, humbly complaining, Hypolitus Joseph Augustin Estho, Catharine Estho, widow of Thaddeus Estho, dec'd, and Romanus Estho, and Martina Estho and Louisa Estho, children of the said Thaddeus Estho, and Catharine his wife, show unto your honors:

That the late Polish general, Thaddeus Kosiusko, departed this life in Switzerland, some time in or about the year 1817, leaving, at the time of his death, in the hands of Thomas Jefferson, of Virginia, late President of the United States, a considerable sum of money.

Your complainants have been informed that the said sum of money had been left in the hands of the said Thomas Jefferson, some time about the year 1798; and at the same time Gen'l Kosiuszko left with him, as your complainants have understood, a writing, with his name thereto subscribed, in these words, to wit:

I, Thaddeus Kosciusco, being just on my departure from America, do hereby declare and direct, that, should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend, Thomas Jefferson, to employ the whole thereof in purchasing negroes from among his own or any others, and giving them liberty in my name, in giving them an education in trade or otherwise, and in having them instructed for their new condition in the duties of morality, which may make them good neighbors, good fathers or mothers, husbands or wives, in their duty as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful; and I make the said Thomas Jefferson executor of this.

T. KOSCIUSZKO.

5th May, 1798.

Your complainants have understood that Mr. Jefferson made no disposition whatever of the said fund, nor did he ever, during the life of the said Gen'l Kosciuszko, take upon himself the execution of the trust confided to him by the said writing, and after his death he refused to act as his executor; in consequence of which, letters of administration were granted, in the county of Washington, upon his estate, to Benjamin L. Lear, whom your complainants pray may be made a defendant to this bill of complaint.

Your complainants have understood that the said defendant, Lear, was under the impression that the writing aforesaid, which Gen'l Kosciuszko had left with Mr. Jefferson, was a will, or testamentary disposition of the money referred to in the said writing, and, being under that impression, he took out his said letters of administration, with the will annexed, meaning the writing herein beforementioned.

Your complainants state that the said defendant, Lear, by virtue of his aforesaid letters of administration, did receive and obtain possession of the moneys and funds of the said Gen'l Kosiuszko, amounting, as they have understood, to twenty-five thousand dollars and upwards, and that he still holds the same as the administrator of the said Thaddeus Kosciuszko.

Your complainants are advised that the paper which was supposed by the said defendant, Lear, to be a will of the said General Kosciuszko, is not

in law a last will and testament, nor does it contain any disposition of the said fund, which could in law, at the time of the death of Gen'l Kosciuszko, or at any time since, be carried into effect in the State of Virginia, where the said writing was executed, and where it was intended that the same should have effect; nor is the said writing competent or valid in law to transfer the said fund from the next of kin of the said Gen'l Kosiuszko.

So far, then, as respects the said writing, your complainants do consider the said Gen'l Kosciuszko as having died intestate.

Your complainants further state, that Gen'l Kosciuszko, immediately after executing the writing hereinbefore mentioned, left Virginia, and went to Europe, and was a considerable time in Paris; and they have heard that while he was in Paris, that is to say, on the 28th of June, 1806, he executed another writing, which was sealed with his seal, in these words, to wit:

Know all men by these presents, that I, Thaddeus Kosciuszko, formerly an officer of the United States of America in the revolutionary war against Great Britain, and a native of Liloane, in Poland, at present residing at Paris, do hereby will and direct, that at my decease the sum of $3,704, current money of the aforesaid United States, shall of right be possessed by, and delivered over to the full enjoyment and use of Kosciuszko Armstrong, the son of Gen'l John Armstrong, minister plenipotentiary of the said States at Paris; for the security and performance whereof, I do hereby instruct and authorize my only lawful executor in the United States, Thomas Jefferson, President thereof, to reserve in trust for that special purpose, of the funds he already holds belonging to me, the aforesaid sum of 3,704 dollars in principal, to be paid by him, the said Thomas Jefferson, immediately after my decease, to him, the said Kosciuszko Armstrong, and, in case of his death, to the use and benefit of his surviving brother. Given under my hand and seal, at Paris, this 28th of June, 1806.

THADDEUS KOSCIUSZKO. [SEAL.]

In presence of
CHARLES CARTER,
JAMES M. MORRIS.

Whether this writing was really executed as it purports to be, your complainants know not, and should require proof that the same was duly executed; and if the same were duly executed, they know not whether it would amount to a good and valid disposition of so much of the fund in the hands of Mr. Jefferson, as is specified in the said writing: and your complainants must submit these matters to the judgment of the court.

Your complainants say, that if the two writings herein mentioned should be deemed by the court void in law, or incompetent to transfer the moneys and funds of the said Thaddeus Kosciuszko from his next of kin, then they contend that the moneys and funds of the said Gen'l Kosciuszko, in the hands of the defendant, Lear, after satisfying all just claims which may exist against the said estate, are subject and liable to distribution among the next of kin of him, the said Thaddeus Kosciuszko; and your complainants do charge that the said writings are invalid and inoperative, and that he, the said Thaddeus Kosciuszko, is to be considered as having died intestate.

Under this impression, your complainants then further state that the said Gen'l Thaddeus Kosciusko was never married, and that his only relative and nearest of kin was a sister named Anna Kosciuszko, who intermarried with Peter Estho, a captain in the Polish army, and both of whom are now dead, intestate.

That, by this marriage, there were left the following children, to wit, Stanislaus and Thaddeus Estho: that Stanislaus Estho departed this life, leaving your complainant, Hypolitus Joseph Augustin Estho, his only child and heir at law. And that the said Thaddeus Estho hath also departed this life, leaving your complainant, Catharine Estho, his widow, and your complainants, Romanus Estho, Martina Estho, and Louisa Estho, their only children.

Your complainants state, that they are the true and only representatives of the said Peter Estho, and Anna his wife, who was the sister, as before mentioned, of the said Thaddeus Kosciuszko, and as such are entitled, by inheritance, to all the estate, real and personal, of the said Thaddeus Kosciuszko; and, as an evidence of such their title, they submit to the consideration of the court the certificates and documents herewith exhibited, and pray that they may be taken as part of this bill: (none filed.)

Your complainants, considering themselves entitled, by inheritance as aforesaid, to the moneys and property of the said General Kosciuszko, in the hands of the said defendant, Lear, they applied to him to distribute the same among them, but the said defendant refused to do so, believing that he would not be justified in so doing, without the sanction and decision of this hon'ble court.

In tender consideration whereof, and for as much as your complainants are remediless in the premises by the strict rules of the common law, and cannot get a decision upon the validity of the writings aforesaid, or obtain a distribution of the moneys and funds aforesaid in the hands of the said defendant, Lear, without the assistance of this hon'ble court in chancery, where matters of this nature are properly cognizable, to the end, therefore, that the said defendant may true and proper answer make to all and singu lar the premises, as fully and particularly as if the same were herein again repeated and interrogated, and that the said defend't, Lear, may settle his administration account, and pay over and distribute among your complainants the moneys and funds of the said Thaddeus Kosciuszko, in his hands to be administered, and that this court may make such other order and decree in the premises, as may be consistent with equity and good conscience, may it please the court to grant to your complainants the United States' most gracious writ of subp'a, to be directed to the several defendants, commandmanding them, &c.

SWANN, for the complainant.

Thereupon a subpœna issued against the defendant, as prayed for in said complainants' bill, and made returnable to 1st Monday of November.

At which said first Monday of November, in the year 1827, come into court here the said complainants, by their solicitor aforesaid; and the marshal to whom the said subpœna was issued made return thereof to the court here, thus endorsed, to wit, "Summoned, T. Ringgold, marshal:" and the said defendant, being called, appears in court here, by Benj. L. Lear, Esquire, his solicitor; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by *court* of the said parties, by their solicitors aforesaid, was regularly continued at rules until the 2d day of Nove ber, 1829, when the defendant filed in court here the following answer, to wit:

Answer.

To the honorable judges of the circuit court of the District of Columbia for the county of Washington, in chancery.

The answer of Benjamin L. Lear to the bill of complaint exhibited against him, before your honors, by Hypolitus Joseph Augustin Estho, Catharine Estho, Romanus Estho, and Martina Estho, and Louisa Estho.

This respondent, saving and reserving, &c. for answer to the bill of complaint of the said complainants, saith, that he believes it to be true that Gen'l Thaddeus Kosciuszko died in Switzerland in 1817, leaving in the hands of Thomas Jefferson, of Virginia, late President of the United States, a considerable sum of money, invested partly in six per cents. of the funded debt of the U. States, and partly in shares of the Bank of Columbia, in Georgetown.

He also believes it to be true that the said sum of money had been left in the hands of the said Thomas Jefferson some time about the year 1798, together with the writing set forth in the said bill, signed by the said Gen'l Kosciuszko, and dated 5 May, 1798. He also believes it to be true that Mr. Jefferson made no disposition of the said fund, nor took upon himself the execution of the trust confided to him, (if it be in the nature of a technical trust, which this respondent denies,) and refused to act as the executor of the said writing, or of the said Kosciuszko, after hearing of his death.

But this respondent has heard, and believes, that, very soon after hearing of the death of Gen'l Kosciuszko, Mr. Jefferson wrote to Mr. Wirt, who was then Attorney General of the U. States, mentioning the will and funds he held of Gen'l Kosciuszko, and alleging his determination not to take upon himself the duty of executor, because of his advancing age and other occupations, and requesting Mr. Wirt to administer himself, or recommend some other person for that office: that Mr. Wirt requested this respondent to take the administration, and that this respondent did take it about August, 1820, but not without a good deal of hesitation, nor until he had first written to Gen'l Armstrong, (from whom he found, among the papers in his hands, a letter to Mr. Jefferson, stating a claim on the funds in behalf of his son, Kosciuszko Armstrong,) to inquire whether he had any objection to his administering, and had received his answer, saying that he had not; Gen'l Armstrong being the only claimant in this country, so far as he could ascertain from the papers.

This respondent further says, that, after he had taken administration on the estate, with the will annexed, (by which *will* he means the paper left with Mr. Jefferson, 5th May, 1798, as set forth in the complainants' bill, and which he alleges to be a valid will, as regards personal property,) he received from Mr. Jefferson two certificates of the six per cent. funded debt of the U. States, in the name of Gen'l Kosciuszko, one for $\$11{,}363\frac{63}{100}$, and the other for $\$1{,}136\frac{36}{100}$, and a certificate of forty-six shares, of $\$100$ each, of the Bank of Columbia at Georgetown, also in the name of Gen'l Kosciuszko; that, since the said funds came to his hands, he has received the dividends, and reinvested them from time to time, as well as the dividends upon those reinvestments, in such manner as he deemed most for the interest of the estate, until the amount of assets of the estate now in his hands, and for which he is accountable, is about $\$28{,}445$, that is, by taking all the stocks at their par value. But this respondent considers the stock of the Bank of Columbia, amounting to $\$4{,}600$, to be now of no value, and that

this sum ought, therefore, to be deducted from the assets. That he has rendered his administration accounts from time to time, under oath, to the orphans' court of this county; and to these accounts he would refer the complainants for a full knowledge of the funds in which the assets are invested, and of the condition of the estate. This respondent further says, that, in his letters to Gen'l Armstrong, announcing his intention to administer, he stated that he should not pay any claim upon the funds of the estate, without the sanction of the orphans' court, and that Gen'l Armstrong, in behalf of his said son, afterwards filed his bill in your honorable court, to obtain a decree for the payment of the sum mentioned, in the writing set forth in the bill of these complainants, dated at Paris, 28th June, 1806, and that the said bill was dismissed by an order of your honorable court, which order was afterwards confirmed on appeal to the Supreme Court of the U. States; and that the aforesaid Kosciuszko Armstrong has since filed another bill in your honorable court against this respondent, for the same purpose, which bill is now pending That this respondent, about three or four years ago, was making arrangements to establish in New Jersey a school, for the purpose of carrying into effect the provisions of the will under which he received his letters of administration, but was arrested in this purpose by a notice to him from an agent, he believes of these complainants, of their intention to contest the validity of the will, and to file a bill against him, and to claim the whole funds of the estate, as the heirs at law of Gen'l Kosciuszko, and which he supposes to be this bill now filed in your hon. court.

This respondent is unwilling to make any unreasonable opposition to the claim of the complainants, or any other claim which may be made upon the assets of the estate in his hands. In his character of administrator, he is indifferent as to the disposition of the said assets, provided he can be protected by a decree of this honorable court, directing the disposition of them, so as to prevent his personal liability, in future, to any other person having claims upon them. He deems such a decree for his protection the more important, in as much as he finds, among the papers received by him from Mr. Jefferson, a letter from a Mr. Zeltner, of Soleure, in Switzerland, mentioning, so far as this respondent can understand it, some other will made by Gen'l Kosciuszko in Europe. But this respondent considers it his duty, as administrator, with the will annexed, to sustain that will, and to carry its provisions into effect, so far as he can do so without unreasonable opposition to other claims upon the assets. He cannot therefore admit that the complainants are the heirs and only heirs at law of Gen'l Kosciuszko, and must insist upon proper and satisfactory proof of that and all other the allegations of the complainants in their bill. He alleges, and submits to this hon. court, that the will under which he administers, (being the paper set forth in the complainants' bill, dated 5 May, 1798, and signed T. Kosciuszko,) is a valid will for the disposition of personal property, and for all the purposes for which it was made and provides, and that the disposition of the funds which it provides for could have been carried into effect in Virginia at any time since the death of Gen'l Kosciuszko. But this respondent denies that any intention that the same should have effect in Virginia exclusively, is not apparent in the will itself, nor does he believe such to have been the testator's intention, so far as it relates to the education of negroes. He avers that he never intended, as the administrator under the will, to attempt to carry it into effect, in this respect, in Virginia, but that he was preparing to establish, in the State of New Jersey, a plan for the education, ac-

cording to the provisions of the will, of such young negroes as he should purchase, or as might be given to him by their masters for that purpose, when his proceedings were arrested by the notice received by him of the intention of these complainants to file this bill. And this respondent prays your honors that his answer to the bill of complaint of Kosciuszko Armstrong, by his father and next friend, John Armstrong, (hereinbefore mentioned, and which was heretofore filed against this respondent, and dismissed by your honors,) may be taken as a part of this his answer to the bill of these complainants, so far as the same may be found applicable and responsive thereto, and that this respondent may be hence dismissed with his costs in this cause unreasonably by him sustained.

B. L. LEAR,
Adm'r of Thad Kosciuszko.

[The answer here referred to is copied in pages 17 to 33.]

And thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their solicitors aforesaid, was regularly continued at rules until the first Monday of December, 1831.

And now, this day, to wit, the said first Monday of December, in the year of our Lord eighteen hundred and thirty-one, come again into court here the parties aforesaid, by their solicitors aforesaid; thereupon, the complainants, by their solicitors aforesaid, filed in court here the following replication:

Replication.

These complainants, saving and reserving to themselves all and all manner of exceptions, &c., for replication to the answer of said defendant, saith, that they do and will aver, maintain, and prove their said bill to be true, and sufficient in the law to be answered unto by said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliants, without that that, &c.

Thereupon, by consent of parties, by their solicitors aforesaid, this cause is set for hearing upon the bill, answer, replication, and exhibits, and the defendant waives all objection to the right of the complainants to proseeute this suit as the next of kin of his said intestate; thereupon, the court make the following decree, to wit:

Decree.

This cause, having by consent of parties, being set for decree upon the bill, answer, exhibits, and agreements of the parties, and coming on now to be heard, the court, upon considering the same, doth decree and order that the complainants' bill be dismissed with costs: and the same is hereby dismissed with costs.

Test: WM. BRENT, Clk.

7 Dec. 1831.

And thereupon the said complainants, by their solicitor aforesaid, pray an appeal from judgment aforesaid, so as aforesaid rendered to the Supreme Court of the United States, and it is granted them. And the said complainants, by their solicitor aforesaid, at the same time, produced and filed in court the United States' writ for the correcting of errors of and upon the

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judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, (the defendant having dispensed with an appeal bond,) and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of said circuit court, at the city of Washington, this 17th day of January, A. D. 1832.

WM. BRENT, Clerk C. C. [L. S.]

The answer of B. L. Lear, referred to in page 13.

Exhibits referred to in page No. 13.

The answer of Benjamin L. Lear to the bill of complaint of Kosciuszko Armstrong, an infant, under the age of twenty-one years, by his father and next friend, John Armstrong, of the county of Dutchess, in the State of New York.

This respondent, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the said complainant's said bill contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, saith, that he is the administrator, with the will annexed, of Thaddeus Kosciuszko; that he has no knowledge of a fund having been placed by the late General Thadde. Kosciuszko in the hands of Thomas Jefferson, and a will having been executed by him, excepting such as he has derived from a letter of said Thomas Jefferson to Mr. Pierre de Poletica, the Envoy from Russia to the United States of America, and a copy of the record of the court of Albemarle county, in Virginia, a copy of which letter and record he received among the other papers from said Thomas Jefferson, which were put into his hands, as relating to the administration of the estate of said Thaddeus Kosciuszko, and a copy of which letter is herewith exhibited to the court, marked defendant's exhibit A, which this defendant prays may be taken as part of this his answer. That this respondent admits that the instrument mentioned in the complainant's bill, and exhibited to this court by him, marked exhibit B, was executed and authenticated, as it purports to be, at Paris, in the kingdom of France, the said Thadde. Kosciuszko being domiciled and resident at said Paris at the time said instrument was executed and bears date; but this defendant submits to this honorable court, and prays its decision thereon, whether it will decree him to pay the said sum of three thousand seven hundred and four dollars to the said complainant, upon an instrument made under the circumstances and authenticated in the manner that the aforesaid instrument is, and whether said instrument shall have the effect to revoke or alter any part of said Kosciuszko's will, solemnly executed and left in the hands of his executor in this country to be carried into execution at his death, and especially when it appears upon this defendant's exhibit A, that the said executor had received from his testator a letter of so late a date as the 15th of September, 1817, in which he says of this fund, "*after my death, you know its invariable destination.*"

And this defendant submits to the decision of this honorable court, whether, if the instrument aforesaid, being genuine and properly authenticat-

ed, is of the nature and effect of a will or testament, the said letter of the testator to his executor does not operate as a revocation of said instrument, and a re-establishment of his former will. And this defendant, further answering, saith, that he believes it to be true that the said Thomas Jefferson, named as executor in said Kosciuszko's will, refused to take out letters testamentary on his estate, and renounced all claim and right so to do, according to law. And this defendant saith, that he was on the fourteenth day of August, in the year 1821, appointed by the orphans' court of the county of Washington, District of Columbia, the administrator, with the will annexed, of the estate of the said General Thaddeus Kosciuszko, and received from the said orphans' court letters of administration, with said will annexed, a copy of which is herewith exhibited to this court, marked defendant's exhibit C, and which this defendant prays may be taken as part of this his answer.

That, after receiving said letters of administration, there came to the hands of this defendant, from the said Thomas Jefferson, as the estate of said Kosciuszko, two certificates of the six per cent. stock of the United States, one of eleven thousand three hundred and sixty-three dollars and sixty-three cents, and the other of one thousand one hundred and thirty-six dollars and thirty-six cents, and one certificate of stock of the Bank of Columbia, of forty-six shares, amounting, at their par value, to four thousand six hundred dollars. That the appraisers appointed by aforesaid orphans' court to estimate the value of said stocks, appraised them both at par, taking into consideration the advance of the market price of the one, and the depreciation of that of the other, and their respective amounts, and appraising them both together. That, after the receipt of said certificates, there came to the hands of this defendant dividends upon said stocks, to the amount of four thousand one hundred and four dollars, which he invested, with the consent of said orphans' court, in six per cent. stocks of the said United States, and which purchased of said stock of the United States a certifi. of three thousand seven hundred and ninety-four dollars and twenty-four cents, and that there have since come to his hands, as dividends upon all of said stocks, five hundred and eighty dollars and eighty-two cents, making the whole amount of the estate of said Kosciuszko, which has come to his hands, *twenty thousand eight hundred and ninety-four dollars and twenty-three cents* of stocks estimated at their par value, and *five hundred and eighty dollars and eighty-two cents in cash.* This defendant, further answering to the bill of said complainant, saith, that, among the papers which came to his hands as hereinbefore mentioned, is a letter from the aforesaid Mr. de Poletica to the said Thomas Jefferson, enclosing a copy of a despatch from the viceroy of Poland to him, a copy of which letter and despatch is herewith exhibited to this honorable court, marked defendant's exhibit D, and by which this defendant understands that the whole estate of Kosciuszko may hereafter be claimed by a Major Estho, of Poland, as the heir at law of said Kosciuszko. That this respondent communicated to said Poletica, in April last, such information as he possessed in relation to said estate, and was informed by said Poletica that the same would be transmitted to the said viceroy of Poland. That there were also, among the papers aforesaid, two letters from a Mr. Zeltner to said Thomas Jefferson, copies of which are herewith exhibited, marked "defendant's exhibit E," and "defendant's exhibit F," by which this defendant understands that the said Kosciuszko has disposed of the greater of his fortune in favor of the children, nieces, brothers, and

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sister of the said Zeltner, and that his (said Kosciuszko's) parents were living in Poland at the date of the first of said letters. And this defendant denies all and all manner of confederacy, &c., without that, &c. All which matters and things this defendant is ready to aver and prove as this honorable court shall direct and award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully incurred.

B. L. LEAR,
Adm'r of the estate of Thaddeus Kosciuszko.

Exhibit A.

MONTICELLO, *June* 12, 18 .

SIR: I have received your favor of May 27, on the subject of the property of the late Gen'l Kosciuszko, vested in our funds, and left under my care and direction. A little before the departure of the gen'l from America, in 1798, he wrote a will, all with his own hand, in which he directed that the property he should possess here at the time of his death should be laid out in the purchase of young negroes, who were to be educated and emancipated: of this will he named me executor, and deposited it in my hands. The interest of his money was to be regularly remitted to him in Europe. My situation in the interior of the country rendered it impossible for me to act personally in the remittances of his funds; and Mr. John Barnes, therefore, of Georgetown, was engaged, under a power of attorney, to do that on commission, which duty he regularly and faithfully performed until we heard of the death of the general. We had in the mean time, by seasonably withdrawing the greater part of his funds from the bank in which he had deposited them, and lending them to the Government during the late war, augmented them to $17,159 63, to wit 12,499 63 in the funds of the U. S. and 4,600 in the Bank of Columbia, in Georgetown. I delayed for a considerable time the regular probate of the will, expecting to hear from Europe whether he had left any will there which might affect his property here. I thought that prudence and safety required this, although the last letter he wrote me before his death, dated Sep. 15, 1817, assured me of the contrary, in these words: "Nous avançons tous en age: c'est pour cela, mon cher et respectable ami, que je vous prie de vouloir lien (et comme vous avez tout le pouvoir) arranger qu'après la mort de notre digne ami Mr. Barnes, quelq'un d'aussi probe que lui prenne sa place, pour que je *re*coive les interets ponctuellement de mon fond; duquel, après ma mort, vous *savez la destination* invariable; quant à present faites pour le mieux comme vous pensez." After his death, a claim was presented to me on behalf of Kosciuzko Armstrong, son of Gen'l Armstrong, of $3,704, given in Kosciuzko's lifetime, payable out of this fund; and subsequently came a claim to the whole from Mr. Zoeltner, of Soleure, under a will made there. I proceeded, on the advice of the Attorney General of the U. S. to prove the will in the State court of the district in which I reside, but declined the executorship. When the gen'l named me his executor, I was young enough to undertake the duty, although from its nature it was likely to be of long continuance; but the lapse of 20 years more had rendered it imprudent for me to engage in what I could not live to carry into effect. Finding now, by your letter of May 27, that a relation of the general's also claims this property, that it is likely to become litigious, and age and incompetence to

business admonishing me to withdraw myself from entanglement of that kind, I have determined to deliver the will and whole subject over to such court of the U. S. as the Attorney Gen'l of the U. S. shall advise, (probably it will be that of the District of Columbia,) to place the case in his hands, and to petition that court to relieve me from it, and to appoint an administrator with the will annexed. Such an administrator will probably call on the different claimants to interplead, and let the court decide what shall be done with the property. This I shall do, sir, with as little delay as the necessary consultations will admit; and when the administrator is appointed, I shall deliver to him the original certificates which are in my possession: the accumulating interest and dividends remain untouched in the Treasury of the U. S. and Bank of Columbia.

I learnt with pleasure your return to the U. S. and in a character which enables you to do much good to your own as well as to our country. The peace and friendly intercourse of nations depend much on the personal character of their diplomatic agents, whose view of things, in black or in white, cannot fail to tinge that of their respective Governments. Your friendly dispositions give us entire confidence that every thing from you will be conciliatory, and its effects the greater, as the proofs we have had of tne friendship of your great and good emperor give us confidence that whatever seed you sow will *will* fall neither by the way side, nor in *strong* places, nor among thorns, but on good ground, which will bring forth fruit to an hundred fold.

We all recollect with pleasure the favor of your former visit to Monticello, and a repetition will be equally gratifying, should your affairs permit. The country cannot, like the cities, furnish the amusements of varied society. A varied scene is all it can offer to its guests, and a view of the tranquil current of domestic life. In presenting to you the souvenirs of the family, I tender my salutations also, and the assurance of my high respect and consideration.

TH. JEFFERSON.

H. E. M. De Poletika,
Ambassador of Russia.

Exhibit B.

Red Hook, 4 *Jan.* 1818.

Dear sir: Some years before I left Paris, Gen'l Kosciuszko put into my hands the paper of which the enclosed is a copy. Understanding that it was not to be used till the general's death, it has been in my cabinet unopened from that day till this, & is now recurred to, on the information brought by the mails of the day that the gen'l had died in Switzerland on the 15th of Oct. last, and that his funeral was celebrated in Paris on the 31st of that month. I beg to know from your kindness, whether you have any information from Switzerland or France, in relation to this event, & (if it corresponds with mine) what other steps, if any besides furnishing the original documents, will be necessary or proper to give effect to the general's will, so far as my son is concerned. The young man is now fifteen or sixteen years old.

I beg you, sir, to accept assurances of my great respect and esteem.

(Signed) JOHN ARMSTRONG.

Thomas Jefferson, Esq.
Monticello, Virginia.

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Exhibit C.

DISTRICT OF COLUMBIA, *Washington county, sct.*—The United States of America, to all persons to whom these presents shall come, greeting.

Know ye, that an attested copy of the last will and testament of Thaddeus Kosciuszko, of Poland, deceased, hath, in due form of law, been exhibited and recorded in the office of the register of wills for Washington county, a copy of which, to these presents annexed, and administration of all the goods and credits of the said Thaddeus Kosciuszko, deceased, is hereby granted and committed unto Benjamin L. Lear, Thomas Jefferson, the executor by the said will appointed, having refused to act as such.

Witness Richard B. Lee, Esquire, judge of the orphans' court of Washington county, in the District of Columbia, this 14th day of August, in the year of our Lord one thousand eight hundred and 21, and of the independence of the United States the 46th.

Test: HENRY C. NEALE, [SEAL.]
Register of wills.

I do swear that I will well and truly administer the goods, chattels, and personal estate of Thaddeus Kosciuszko, late of Poland, deceased, to the best of my knowledge, according to law, and will give a just account of my administration, when thereto I shall be lawfully called, so help me God.

Sworn in open court.

Test: HENRY C. NEALE,
Reg. wills.

I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and direct, that, should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend Thomas Jefferson to employ the whole thereof in purchasing negroes from among his own or any others, and giving them liberty in my name, in giving them an education in trades or otherwise, and in having them instructed for their new condition in the duties of morality, which may make them good neighbors, good fathers or *moders*, husbands or wives, and in their duties as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful. And I make the said Thomas Jefferson my executor of this.

T. KOSCIUSZKO.

5 day of May, 1798.

At a superior court of law, held for Albemarle county the 12th day of May, 1819, this instrument of writing, purporting to be the last will and testament of T. Kosciuszko, deceased, was produced into court; and satisfactory proof being produced of its being written entirely in the handwriting of the said Thaddeus Kosciuszko, the said is ordered to be recorded: and therefore Thomas Jefferson, the executor therein named, personally appears in court, and refuses to take upon himself the burden of the execution of the said will.

Teste: JOHN CARR, Clk.

Virginia, Albemarle superior court office, to wit.

I, Alexander Garret, clerk of the superior court of law for the said county of Albemarle, do hereby certify that the above is a true copy of the original

will of Thaddeus Kosciuszko, deceased, of record in my office, as likewise the order of court thereupon, attested by John Carr, the clerk of said court.

In testimony whereof, I have hereunto set my hand, and caused the seal of my office to be hereunto affixed, this tenth day of January, one thousand eight hundred and twenty, and in the 44th year of the commonwealth.

ALEXANDER GARRET, C. C. [SEAL.]

Virginia, Albemarle county, to wit.

I, Archibald Stuart, duly allotted judge to the eighth circuit, composed of the counties of Bath, Rockbridge, Augusta, Amherst, Nelson, and Albemarle, do hereby certify that Alexander Garret, whose signature is annexed to the within certificate, is clerk of the superior court of law for Albemarle county, duly appointed and qualified as such, and that his certificate is in due form of law. Given under my hand and seal, this 23d day of January, 1820.

ARCH'D STUART. [SEAL.]

I certify that the aforegoing last will of Thaddeus Kosciuszko, together with the order of court, is truly copied from an attested copy of record in my office.

Witness my hand and seal of office, this 14th day of August, in the year 1821.

H. C. NEALE, Reg. wills. [SEAL.]

Defendant's exhibit D.

MONSIEUR: Peu avant mon départ de Paris en février dernier, j'ai reçu du Vice-Roi de Pologne Prince Zajonceck, la lettre dont j'ai l'honneur de vous transmettre ci-joint la copie avec celles des pieces qui l'accompanoient: le tout indique clairement la nature que me demande le Gouvernment de Pologne et que n'ai pas hésité de lui promettre, comptant d'avance sur votre obligeance malgre tous les motifs qui m'engageoient à respecter vos lorsirs si precieux par les souvenirs aux quels ils se rattachent.

Je saisis avec empressement cette occasion pour vous exprimer Monsieur, mon vif desir d'obtenir la permission de me présenter encore une fois à Monticello pour vous y renouveller de vive voix l'expression de la haute considération avec laquelle jai l'honneur,

d'être, Monsieur,

Votre très humble & tres obeissant serviteur,

PIERRE DE POLETICA,

Envoye de Russia près les U. S. de Amérique.

WASHINGTON CITY, le 27 Mai, 1819.

Copie d'une dépeche du Vice-Roi du Royaume de Pologne à Mr. de Poletica, datée de Varvosie, du 17 Nov. 1818.

Le Sieur Estko, ci-devant Major à l'armée Polonaise neveu du feu le Général Kosciuszko, se trouvant dans le cas d'avoir besoin d'une information éxact sur l'état de la fortune que le dit Général a'pu delaisser, a reclamé l'intervention de son Gouvernement à l'effet de lui procurer des éclaircisements nécessaries à cet égard par l'entremise de la mission de S. M. J. et R. Notre Auguste Maitre pres la Cour de France.

La correspondance dont Mr. le Gl. Pozzo di Borgo, a bien voulu se charger à cet effet avec des personnes qui lui sembloient être le plus à même de connoître les moyens pecuniaires du feu Kosciuszko a donné pour resultat deux lettres ci-joints en copies, portant quelques renseignements sur l'object ci-dessus mentionné.

Is courte de ces deux piecès et votre excellence voudra bien s'en convaincre, que le Gl. Kosciuszko outre les fonds déposés entre les mains de différentes banquiers en France et en Suisse en possédoit de plus considérables encore chez Mrs. Thomson & Bonar à Londres, et chez Jefferson et Barnes à Washington.

Le Sieur Estko met d'autant plus d'interêt à obtenir des notions précises relativement aux fonds de son oncle places en Amérique, que'il a tout lieu de supposer qu'ils ne sont point compris parmi les sommes dont le defunt a dispose par son testament.

Faisant par conséquent droit aux plus vives instances du pétitionaire, j'ose vous supplier, Monsieur de daigner faire les démarches nécessaris pour cet effect compris les Sieurs Jefferson et Barnes, citoyens des Etats Unis, et de vouloir bien m'en communiquer le resultat des qu'il aura été porte à votre connoissance.

Je saisis avec empressement cette occasion pour offrer à V. Ex. l'expression de ma très haute consideration.

(Signé) ZAJONCECK.

Conforme à l'original:

POLETICA.

Copie d'une lettre de Mr. Hollinquer à S. Ex. le Gl. Pozzo di Borgo, datée de Paris, du 2 Juillet, 1818.

En reponse à la lettre que V. Ex. nous a fait l'honneur, de nous écrire d' le 29 Juin, nous la privenons qu'aux époquees du 5 Avril et du 4 Juin, 1818, les fonds déposes chez nous par leu le Gl. Th. Kosciuszko, s'elivoient en principal à la somme de fr. 99,775, et que le jer. October, 1817, le solde lui revenant sur nos lions, etoit de f.102,400, a peu de chose près et intérêts compris.

D'apres quelques renseignements que nous avons recus et dont nous ne pouvons garanter l'exactitude il paroit qu'au deces du Gl. Kosciuszko, (15 Octobre, 1817,) il avoit en depot environ:

f.100,000, chez Messrs. T. Thomson, T. Bonar et Cie. a Londrez.
6,000, chez Mr. G. Esher à Zurich.
5,000, chez Mr. Beltin à Soleure.

111,000, ensemble.

Le General Kosciuszko à fait deux testaments l'un daté de Soleure le 4 Juin, 1816. L'autre équaliment daté de Soleure, le 10 Octobre, 1817. Par le premier il a legue sur ses fonds en nos mains:

f.60,000, en faveur de Mlle. Thadea Emine Wilhelmina Zeltner, sa filbule.
35,000, en faveur de Mlle. Maria Charlotte Zuire, Marguirete Zeltner.
5,000, en faveur de Mr. Bonissant père notaire à Moret exécuteur testamentaire.

f.100,000, total portant intérêts à 5 p. ct. s'an du jour du deces.

Par l'autre testament le Gl. a dispose de tous ses fonds chez Messrs. T. Thomson, T. Bonar et Cie., F. G. Esher, et Beltin, en faveur de divers. Is a aussi despose du reste de son avoir chez nous et a nomme Mr. Havier Amietly de Soleure pour executeur du 2d testament.

Ces deux exécuteurs testamentaires s'etant mis en regle vis a vis de nous, nous avons paye f. 102,430 10, le 9 Avril dernier à Mr. *Mr.* Bonissant, en execution du testament du 4 Juin, 1816, principal et intérêts 2,700, to 2 Juin à Mr. Havier Amieth pour balance du compte du Gl. Kosciuszko, chez nous f. 105,130 10 ensemble, au moyen de quoi nous n'avons plus aucuns fonds appartenant à la succession du Gl.

Nous avions lieu de croire que les autres maisons ne sont egalement dessaisies des fonds en leurs mains en ecucution du second testament.

Quant aux fonds que pouvoit avoir le Gl. Kosciuszko en Amérique nous avons su que vers l'annee 1810, il avoit

$12,500 environ places chez Mr. Jefferson, le ancien president des Etats Unis.

4,500 environ chez un Mr. Barnes à Washington.

$17,000 Soit à peu pres quatre vingt cinq mille francs, mais nous ignorons entierement s'il en a despose.

(Signe) HOTTINGUER.

Conformé à l'original.

POLETICA.

Copie d'une lettre de Bonissant, vère notaire à Moret a S. Ex. Mr. W. Gl. Pozzo di Borgo, datée de Moret du 3 Juillet, 1818.

Je n'ai pas été à meme de connoitre la fortune de Mr. le General; il etoit retire tout pres d'ici dans la famille de Mr. Zeltner dont j'ai la confiance. Voila comme j'ai fait sa connoissance et que parsuite il me donné des marques d'amitié, et m'a rendu aussi depositaire de son testament. Environ dix-huit mois avant de mourir il avoit fait un testament dont il m'avoit confie un double; le testament aussitôt son deces à ete ouvert suivant les formes legales; il a legué a plusiers personnes les sommes en argent qu'il avoit à Paris entre les mains de la maison Nollinguer et comp. Il m'avoit choisi pour son executeur testamentaire, et j'ai fait acquittes les leg's. Quant à ce concerne les autres moyens pécuniaires de ce respectable Général, je ne puis vous donner aucun renseignement, je ne sais même pas s'il avoit d'autres fonds ou des biens ailleurs.

Je présume que vous pourriez le savoir en vous addressant à Mr. Zeltner chez lequel il dernierait: Il serait plus à même de vous satisfaire sur cette demande. Mr. Zeltner est parti il y a environ trois mois pour accompagner les precieux restes de ce digne Général à Gracovie, et doit être de retour sous peu de jours.

J'ai l'honneur d'être, etc.

(Signe) BONISSANT.

Conformé à l'original.

POLETICA.

Exhibit F.

SALEURE OU SWFIE, *le* 14 *Avril*, 1819.

MONSIEUR: J'ai recu il y a peu de jours, la lettre que vous m'ayez fait 'honneur de m'ecrire le 23d Juillet, 1818, et au moment que je lui suis

ridiefe a vos autoicles pour sue faire doner au extrait mortuaire du Général Kosciusko demuent légalise pous vous linoayer par votre Ministre a Paris apprens, que votre charge de'affairs en France vient deu faire la demande au nom de Monsieur Galatin a peu de pouvoir executer dans les Etats-Unis de l'Amérique un les pus le defaut et que cet cute alloit itu expedie. Je regrette que le retard que eprouve votre lettre de mail pas parvins de satisfaire plutot a votre desir de mettre on execution les valouler bienfaisantes et plulantre pigue du grand homme, que nous plurons. J'ai l'honneur de vous remercier du detail interessant que vous me donnez dans votre lettre au subject de vos émigres et vous prie d'agreer l'assurance de ma plus haute estime et de mon respectueurg d'evoument.

F. X. ZELTNER.

Exhibit E.

MONSIEUR: Ayant eu l'avantage de jouir pendant plus de vingt annees de l'amitie toute particuliere de l'Illustre défunt, qui à passé plus de quire dans ma maison je n'ai pu ignorer des relations amicales que il a cultive avec vous: une amitie fondee sur l'estime reciproque, ne pouvont qu'etre durable; aussi suisque bien persuade des regrets que vous causera la nouvelle de son deces si peu attendee; il eu avoit quitte en May, 1815, pour repondre aux desirs que lui avait temoigne Le Empereur de Russie, de conferei avec lui à Vienne sur le soit de la Pologne; de Vienne il est revener jusqu'a Soleure en Suisse ou il a demeure chez mon frere en attendant qulles circonstances decident s'il doit aller dans sa patrie ou revenu ici dans l'asile qu'il s'etait choisi; il etait sur le point de prendre le dernier part quand la mort l'enlever a sa patrie, il a sis nombrency amis, parmi les quels je sais que vous etes au premier rang. C'est cette consideration qui m'a fait un devoir de vous annoncier directement cette triste nouvelle.

Comme le general Kosciuszko a dispose de la majeurè partie de sa fortune en faveur de mes enfans, dames, nieces, freres et belleseur, et que je suis en outre tres lie avec ses parents que je compte aller vovi en Pologne, je vous prie de vouloir donerer des renseignements sur le capital qu'il a laisse entre vos mains et autres objects qui pourraient etre; votre connaissance: vous obligeres infinement celui qui a l'honneur d'etre avec estime et haute consideration,

Monsieur, votre tres humble et obeissant serveteur,

P. J. ZELTNER.

True copy.

Test: W. BRENT, Clk.